THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 27064 of 2003

O r d e r:

Assailing the award dated 31.07.2003, passed by the Labour Court, GodavariKhani, Karimnagar District, in I.D. No. 90 of 2002, published in G.O. Rt. No. 1590, dated 25.08.2003, the petitioner filed the present writ petition.

The petitioner, while working as Depot Clerk, was issued a charge sheet-cum-suspension order dated 06.09.2000 alleging that he misappropriated a sum of Rs.2911/- from the unpaid salary amount payable to the maintenance staff for the month of August 2000, and unauthorizedly absented for duties from 05.09.2000. The petitioner did not submit any explanation to the said charge sheet. Upon enquiry into the said charges, and based on the enquiry report, which held the charges proved, the petitioner was removed from service vide proceedings dated 07.04.2001of the disciplinary authority. The appeal and review preferred thereagainst, were rejected by the appellate and review authorities, by proceedings dated 20.11.2001 and 08.04.2002 respectively. Assailing the same, the petitioner raised an industrial dispute in I.D. No. 90 of 2002 before the Labour Court, which by award dated 31.07.2003, dismissed the same, upholding the orders of the disciplinary authority as confirmed by the appellate and review authorities. Assailing the said award, the petitioner filed the present writ petition.

Learned counsel for the petitioner submits that the Labour Court erred in passing the award without deciding the validity of the domestic enquiry first. He further submits that the petitioner had put in 20 years

of unblemished record of service, and considering the said fact, the Labour Court ought to have exercised the discretion vested in it under Section 11-A of the Industrial Disputes Act, 1947 and interfered with the punishment of removal from service, imposed by the disciplinary authority, as confirmed by the appellate and review authorities. He submitted that the punishment of removal from service imposed on the petitioner is disproportionate to the charges proved. He thus prayed that the impugned order be set aside and the petitioner be reinstated into service with full backwages.

The learned Standing Counsel for the 2nd respondent-APSRTC reiterating the stand taken in the counter-affidavit submitted that the petitioner in the enquiry clearly admitted that he misappropriated the amount, and the Enquiry Officer having found him guilty of the charges, the disciplinary authority imposed punishment of removal from service, which was confirmed by the appellate and review authorities and the Labour Court. Having regard to the nature of proved charges, the punishment of removal from service, cannot be said to be disproportionate, warranting interference therewith by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the 2nd respondent-APSRTC.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are base on suspicion, conjectures or surmises or no reason. It is within these

parameters, the award of the Labour Court has to be examined.

Though the learned counsel for the petitioner contends that the Labour Court failed to decide the validity of the domestic enquiry, the fact remains the Labour Court, on proper appreciation of the entire material and evidence on record, held that the enquiry was held after giving reasonable opportunity to the petitioner, and there is no violation of any rule while conducting domestic enquiry. A perusal of the award of the Labour Court further shows that though the petitioner had participated in the entire enquiry proceedings, wherein the statements of witnesses were recorded in his presence, yet he did not choose to cross-examine any of the witnesses. That apart, in his statement, the petitioner clearly admitted about the misappropriation of the amount, and the reports of Cleaner and Shramik, marked as Exs.M2 and M3 and the report of Coach Builder shows that they were not paid salaries. The explanation given by the petitioner for his unauthorized absence for duties was also not explained properly and the reasons assigned by him were disbelieved. The Labour Court, after taking the said aspects into consideration, and also keeping in view the previous conduct of the petitioner, wherein he was counseled for his unauthorized absence on three times, and removed from service on two times, felt that the punishment of removal from service imposed by the disciplinary authority, as confirmed by the appellate and review authorities, is proportionate to the proved charges, and I see no reason whatsoever to interfere therewith, more so when all the charges leveled against the petitioner stood proved in the departmental enquiry and when the petitioner failed to point out any of the grounds for judicial review.

In **Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane**[1], the apex Court held that once a domestic tribunal based on evidence

comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. On the question of quantum of punishment, the apex Court held as follows:

> Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration.

In the instant case, as the charges leveled against the petitioner stood proved, and having regard to the gravity and seriousness of the proved charges, the 2nd respondent having lost confidence in the petitioner, removed him from service. In such circumstances, I am of the considered opinion that no interference is called for with the impugned award passed by the Labour Court, upholding the punishment of removal from service imposed by the disciplinary authority as confirmed by the appellate and review authorities.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

_____

N.V. RAMANA, J.

Date: 14th November 2006.
KSR

---

[1] (2005) 3 SCC 254